

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

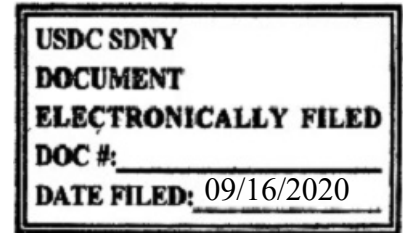
BASHID MCLEAN,

Plaintiff,

-against-

C.O. CLIFTON, et al.,

Defendants.



19-CV-10967 (PAE) (BCM)

**ORDER TO AMEND**

**BARBARA MOSES, United States Magistrate Judge.**

Plaintiff, by letter dated August 13 and filed September 1, 2020 (Dkt. No. 44), seeks leave to file what would be his Second Amended Complaint (Dkt. No. 44-1).

Plaintiff's current pleading – his First Amended Complaint (Dkt. No. 16) – arises out of an incident that occurred on Riker's Island on May 20, 2015, and names C.O. Clifton, Hazel Jennings, and Joseph Ponte as defendants. The proposed Second Amended Complaint arises out of an incident that occurred on October 16, 2014 or February 25, 2015,<sup>1</sup> and names Samantha Brown, Scott Frank, and Captain Brown as defendants. Defendants do not object to plaintiff's application for leave to amend. (Dkt. No. 47.) However, it appears to the Court that plaintiff may believe, mistakenly, that his proposed Second Amended Complaint will supplement, rather than replace, his First Amended Complaint. In fact, if leave to amend is granted, plaintiff's claims will be limited to those alleged in the proposed Second Amended Complaint, and C.O. Clifton, Hazel Jennings, and Joseph Ponte will be dismissed as defendants.

Accordingly, plaintiff's application for leave to amend is DENIED without prejudice to renewal if plaintiff wishes to replace his current pleading – in *toto* – with the proposed Second

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<sup>1</sup> Plaintiff lists February 25, 2015 as the date of occurrence, but his narrative describes an incident occurring on October 16, 2014.

Amended Complaint. If that is what he wishes to do, he must so advise the Court, by letter, no later than **October 23, 2020**.

If, on the other hand, plaintiff wishes to augment his current allegations with new claims involving the incidents described in his proposed Second Amended Complaint, he must submit a revised proposed Second Amended Complaint, in accordance with this Order, no later than **October 23, 2020**. Absent compelling circumstances, plaintiff will not thereafter be granted leave to further amend his pleadings.

Plaintiff's proposed Second Amended Complaint must include a short and plain statement of the facts supporting *each* claim he asserts against *each* defendant from whom he seeks relief. The document should tell the Court: *who* violated plaintiff's federally protected rights; what *facts* show that his federally protected rights were violated; *when* such violation occurred; *where* such violation occurred; and *why* plaintiff is entitled to relief. Thus, to the extent possible, the pleading must:

- a. give the names and titles of all relevant persons;
- b. describe all relevant events, stating the facts that support plaintiff's case including what each defendant did or failed to do;
- c. give the dates and times of each relevant event or, if not known, the approximate date and time of each relevant event;
- d. give the location where each relevant event occurred;
- e. describe how each defendant's acts or omissions violated plaintiff's rights and describe the injuries plaintiff suffered; and
- f. state what relief plaintiff seeks from the Court, such as money damages, injunctive relief, or declaratory relief.

**Because plaintiff's Second Amended Complaint will completely replace, not supplement, any earlier complaints, any facts or claims that plaintiff wishes to maintain must be included in the proposed Second Amended Complaint.**

Given the currently unsettled state of the pleadings, defendants' letter-motion seeking an extension of certain deadlines (Dkt. No. 47) is GRANTED to the extent that discovery is suspended until further order of the Court, and plaintiff's motion to strike defendants' affirmative defenses (Dkt. No. 29) is DENIED without prejudice to renewal.

The Clerk of Court is respectfully directed to close the motions at Dkt. Nos. 29 and 47.

Chambers will mail a copy of this Order to the *pro se* plaintiff.

Dated: New York, New York  
September 16, 2020

**SO ORDERED.**



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**BARBARA MOSES**  
**United States Magistrate Judge**